

# General Terms and Conditions of Sale

## 1. General clauses & scope

- 1.1 Our Terms and Conditions of Sale only and exclusively apply to entrepreneurs within the meaning of Sections 14 and 310(1) of the German Civil Code (BGB). We do not recognise any terms and conditions of the buyer that are contrary to or deviate from our terms and conditions, unless we have expressly agreed or expressly agree in writing or in electronic text form that the buyer's terms and conditions apply. Our Terms and Conditions of Sale shall also apply if we perform delivery of the purchased goods without reservation in knowledge of conflicting or deviating terms and conditions of the buyer.
- 1.2 We shall be entitled to assign the claims arising from our business relationship. Any contrary prohibition of assignment is hereby expressly rejected.
- 1.3 Individual agreements negotiated with the buyer in individual cases (Section 305(1) sentence 3 BGB; including collateral agreements, supplements and amendments) shall in all cases take precedence over these Terms and Conditions of Sale.
- 1.4 Our Terms and Conditions of Sale shall apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers.
- 1.5 References to applicable statutory provisions are only made for the sake of clarity. The statutory provisions shall therefore apply even if no reference made, unless they are directly amended or expressly excluded in these Terms and Conditions of Sale.

## 2. Offers & conclusion of contract

- 2.1 Our offers are always subject to change and are not binding. If an order qualifies as an offer within the meaning of Section 145 BGB, we may accept this offer within two weeks of receipt. Acceptance may be declared either in writing (e.g. by order confirmation) or by delivery of the Goods to the buyer.
- 2.2 The illustrations, details and performance descriptions contained in catalogues, price lists and other documents that we issue in connection with conclusion of the contract are approximate values that are typical in the industry, unless we expressly describe or have described them as binding in our order confirmation.

## 3. Prices, transfer of risk & default in acceptance

- 3.1 Unless otherwise agreed in individual cases, our prices that are valid at the time of conclusion of the contract shall apply, excluding packaging, plus statutory VAT.
- 3.2 The delivery of equipment ordered on a call-off basis is based on the list prices that are valid at the time of call-off or call-off of the last partial delivery.
- 3.3 For sale to destination (No. 7.1), the buyer shall bear the transport costs ex works and the costs of any transport insurance requested by the buyer, unless expressly agreed otherwise.
- 3.4 The risk of accidental loss and accidental deterioration of the Goods shall pass to the buyer at the latest on delivery. However, for sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the Goods and the risk of delay shall pass to the buyer on delivery of the Goods to the forwarding agent, the carrier or any other person or organisation appointed to carry out the shipment.
- 3.5 If the buyer is in default in acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to demand compensation for the resulting loss, including additional expenses (e.g. storage costs). The statutory provisions regarding default in acceptance (Section 293 ff. BGB) shall apply without restriction.

## 4. Claims by the buyer for defects

- 4.1 The rights of the buyer in the event of material defects and defects of title (including wrong and short delivery, as well as improper assembly or defective assembly instructions) shall be governed by the statutory provisions, unless otherwise stipulated below.
- 4.2 The basis of our liability for defects is primarily the agreement reached regarding the quality of the Goods. All product descriptions and manufacturer's details that are the subject of the individual contract or that we have made public (in particular in catalogues, datasheets or on our Internet homepage) at the time of the conclusion of the contract shall be deemed to be the agreement on the quality of the Goods. This information does not constitute any guarantee.
- 4.3 Whether there is a material defect or a defect of title shall be determined in principle in accordance with the statutory provisions (Sections 434 and 435 BGB). However, we do not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements) to which the buyer has not referred as decisive for its decision to purchase.
- 4.4 The buyer's claims for defects shall be excluded if it has not complied with its statutory obligations to inspect and give notice of defects (Sections 377 and 381 of the German Commercial Code (HGB)). In the case of Goods intended for integration or other further processing, an inspection must in all cases be carried out immediately before processing. If a defect is discovered on delivery, inspection or at any later time, we must be notified of the defect promptly in writing. In any case, obvious defects must be reported in writing within eight calendar days of delivery and defects that are not identified on inspection must be reported in writing within the same period from the date that they are discovered. If the buyer fails to carry out the proper inspection and/or to report defects, our liability for the defect that has not been reported or has not been reported in time or not properly shall be excluded according to the statutory provisions.
- 4.5 If the delivered Goods are defective, we may initially choose whether to provide subsequent performance by eliminating the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected.
- 4.6 [subject to change].
- 4.7 The buyer shall give us the time and opportunity necessary for the subsequent performance that we owe, in particular the buyer shall hand over the Goods subject to complaint for inspection purposes. In the event of a replacement delivery, the buyer must return the defective Goods to us in accordance with the statutory provisions. Subsequent performance does not include uninstalling the defective Goods or reinstallation, unless we were originally obliged to install the Goods.
- 4.8 We shall bear or reimburse the expenses necessary for the purpose of testing and subsequent performance, in particular the transport, travel, labour and material costs, as well as any removal and installation costs, in accordance with the statutory provisions, if there is in fact a defect. Otherwise, we may demand reimbursement from the buyer of the costs incurred as a result of the unjustified demand for rectification of defects (in particular inspection and transport costs), unless the buyer was not able to identify the lack of defect.
- 4.9 [subject to change]
- 4.10 The buyer shall only have claims to damages or compensation for futile expense, including in the case of defects, in accordance with the following clause 5; claims in all other respects are excluded.

## 5. Other liability

- 5.1 Unless otherwise provided for in these Terms and Conditions of Sale including the provisions below, we shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions.
  - 5.2 We shall only be liable to pay damages for fault – regardless of the legal grounds – in the event of intent and gross negligence. In the case of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in own affairs; minor breach of duty), for the following:
    - a) loss resulting from injury to life, body or health,
    - b) loss resulting from the breach of an essential contractual obligation (obligation the fulfilment of which is essential for the proper execution of the contract and on compliance with which the other party typically relies and is entitled to rely); in this case, however, our liability shall be limited to compensation for the typically foreseeable loss.
  - 5.3 The limitations of liability under clause 5.2 shall also apply to breaches of duty by or in favour of persons for whose fault we are responsible under the statutory provisions. They do not apply if we have fraudulently concealed a defect or have given a guarantee for the quality of the Goods and they also do not apply to claims by the buyer under the German Product Liability Act (ProdHaftG).
  - 5.4 For a breach of obligation that does not consist in a defect, the buyer may only withdraw or terminate the contract if we are responsible for the breach of obligation. An unrestricted right for the buyer to terminate the contract is excluded. In all other respects, the statutory conditions and consequences shall apply.
  - 5.5 There shall be no claims for material defects if the defect or damage is due to wear and tear as a result of normal use, if the defect or damage relates to spare parts and those assemblies and parts that have to be replaced regularly or if the defect or damage has arisen because the buyer has not reported a defect promptly after its discovery (see clause 4.4) or if the Goods have been handled incorrectly or overused.
  - 5.6 If the buyer is an entrepreneur and is acting in the exercise of its commercial or self-employed professional activity when concluding the contract, used equipment is sold excluding any liability for material defects. This does not affect claims for damages in the event of personal injury or liability for intent and gross negligence.
  - 5.7 If the buyer has resold the delivered Goods to a consumer within the meaning of Section 13 BGB and the consumer asserts claims for defects, the following applies:
    - Claims of the buyer against us are excluded if the buyer does not pass on the consumer's complaint to us within seven calendar days. The complaint must be passed on in writing or in electronic text form.
    - The buyer must send us Goods that are received back from the consumer, at our discretion, either as in entirety or in the form of samples for the purpose of reviewing the consumer's complaint.
  - 5.8 In order to ensure compliance with the statutory provisions (German Medical Devices Act (MPG), Annex 6/5.1), the buyer must guarantee the traceability of delivered medical products on the basis of the serial numbers for a period of 10 years and, in the event of resale via an intermediary, must ensure such traceability contractually up to the end customer.
  - 5.9 For clarity: Preparatory measures for installing a scale, such as preparing a foundation pit for a floor scale or the wall for installing a wall scale, including ensuring sufficient load-bearing capacity of the floor or wall, are not included in the scope of performance and are therefore not covered by the warranty. Such preparatory construction work is not within our responsibility.
- ## 6. Limitation
- 6.1 Notwithstanding Section 438(1) No. 3 BGB, the general period of limitation for claims arising from material defects and defects of title shall be one year from delivery, unless we are liable for intent. Insofar as acceptance has been agreed, the limitation period shall commence on acceptance.
  - 6.2 The above limitation periods shall also apply to contractual and non-contractual claims for damages by the buyer that are based on a defect in the Goods, unless applying the statutory limitation provisions would lead to a shorter limitation period in individual cases. Claims for damages by the buyer under Section 8(2) sentence 1 and sentence 2(a) and under the German Product Liability Act (ProdHaftG), however, shall become statute-barred exclusively according to the statutory periods of limitation.
- ## 7. Delivery and delivery times
- 7.1 Delivery shall be ex works, which shall also be the place of performance (clause 10.1) for the delivery and any subsequent performance. At the request and expense of the buyer, the Goods shall be shipped to another destination (sale to destination). Unless otherwise agreed, we shall be entitled to determine the method of shipment (in particular, the transport company, shipping route and packaging) ourselves.
  - 7.2 The delivery period shall be agreed individually or we shall specify the period when accepting the order. If not agreed individually or specified by us, the delivery period shall be approx. 3 weeks from conclusion of the contract. Compliance with our delivery obligation presupposes that the buyer's obligations are fulfilled on time and properly.
  - 7.3 If we are prevented from fulfilling our obligations due to the occurrence of unforeseeable circumstances (e.g. delays in the delivery of essential raw materials and building materials, the impact of labour disputes or strikes, lockouts, etc.) which we have not been able to avert despite exercising reasonable care within the applicable circumstances, the delivery period shall be extended by a reasonable length of time, provided that delivery or performance does not become permanently impossible and/or the contract is frustrated as a result. However, the delivery period may also be extended in these cases by a maximum of four weeks. After expiry of this extended delivery period, both we (provided that we are not responsible for the obstacle to performance) and the customer may withdraw from the contract without the other party to the contract thereby being able to derive any claims for compensation. We shall immediately reimburse any consideration already rendered by the buyer.
  - 7.4 When default in delivery by us commences shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the buyer shall be required.
  - 7.5 The rights of the buyer under clause 5 of these Terms and Conditions of Sale and our statutory rights, in particular in the case of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.
  - 7.6 Partial deliveries shall be permitted, provided that they are not unreasonable for the customer. Subject to other agreements, the order is understood to be for immediate delivery. If delivery on call is agreed, calls must be made no later than one year after the order is placed, unless otherwise agreed. If an acceptance period has been agreed, the calls for the individual partial deliveries shall be given in good time so that proper manufacture and delivery is possible within the contractual period.
  - 7.7 If the number of devices purchased on call is not accepted on time or if a confirmed order is not accepted despite setting a deadline, we shall be entitled, at our discretion, to send the (remaining) devices to the buyer and to invoice them or to claim damages of 10% of the list price for each device not accepted for the costs incurred in processing the order and for the loss of profit. The buyer reserves the right to prove a lesser loss. This does not imply a waiver on our part of claims under statute; however, the fixed sum shall be set off against further monetary claims.

**8. Terms of payment**

- 8.1 Payments shall be due immediately net after invoicing. New customers and customers with company headquarters outside the Federal Republic of Germany must pay net in advance. When invoiced, default shall commence even without reminder at the latest 10 days after the due date. During the period of default, the purchase price shall bear interest at the statutory default interest rate applicable at the time. We reserve the right to assert further damages from default. Our entitlement to the commercial statutory interest from due date (Section 353 HGB) remains unaffected vis-à-vis merchants.
- 8.2 If the contract provides for cash payment on delivery, delivery and payment by cash on delivery shall also be expressly agreed. All payments must only be made to us to our bank or giro accounts.
- 8.3 Any application of agreed discounts is not allowed if the buyer is in arrears with the payment of another invoice.
- 8.4 If the buyer is in default with the payment of an invoice or if it becomes known after conclusion of the contract that, due to the buyer's poor financial circumstances, it is unlikely that our claim will be satisfied (such as cessation of payments, initiation of insolvency proceedings against the buyer's assets, liquidation of the business, initiation of enforcement measures against the buyer), we shall be entitled to demand immediate payment of all outstanding invoices, including those not yet due, including current bills of exchange and deferred amounts, and to complete performance of concluded supply contracts only against provision of security or payment in advance. In the case of contracts for the manufacture of non-fungible goods (custom-made products), we shall be entitled to declare our withdrawal immediately; the statutory provisions regarding the dispensability of setting a deadline remain unaffected. Any further claims based on the statutory provisions in the event of default remain unaffected hereby.
- 8.5 The buyer shall only be entitled to set-off or retention rights if its claim has been legally established or is undisputed. In the event of defects in delivery, the buyer's counter-rights shall remain unaffected.

**9. Retention of title**

- 9.1 The delivered Goods shall remain our property until full payment of the agreed price and settlement of all claims resulting from the business relationship, including any claims still arising in this regard. This shall also apply if individual claims or all of our claims are included in a current account and the balance is balanced and confirmed. The buyer must inform us immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties (e.g. attachment) have access to the Goods that belong to us.
- 9.2 The Goods subject to retention of title may not be pledged to third parties or transferred by way of security before full payment of the secured claims.
- 9.3 Until power is revoked according to (c) below, the buyer shall be entitled to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.
- a) The retention of title shall extend to the full value of the products resulting from the processing, mixing or combination of our Goods, whereby we shall be considered the manufacturer. If, in the event of processing, mixing or combining with Goods of third parties, their right of ownership remains, we shall acquire co-ownership at the ratio of the invoice values of the processed, mixed or combined Goods. Otherwise, the same applies to the resulting product as to the Goods delivered subject to retention of title.
  - b) The buyer hereby assigns to us as security all claims against third parties arising from the resale of the Goods or product, either in full or in the amount of any co-ownership share we have in accordance with the above paragraph. We hereby accept the assignment. The obligations of the buyer under clause 9.2 shall also apply in consideration of the assigned claims.
  - c) In addition to us, the buyer remains authorised to collect the claim. We undertake not to collect the claim as long as the buyer meets its payment obligations to us, the buyer's ability to pay is not impaired and we do not assert retention of title by exercising a right under clause 9.4. However, if this is the case, we may demand that the buyer informs us of the assigned claims and their debtors, provides all the information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we shall be entitled to revoke the buyer's power to resell and process the Goods subject to retention of title.
  - d) We shall release granted securities if their value exceeds the amount of our claims by more than 10%. On settlement of all our claims arising from the business relationship with the customer, ownership of the reserved Goods and the assigned claims shall pass to the customer.
  - e) In order to assert retention of title, it is not necessary to withdraw from the contract, unless the purchaser is a consumer (which is excluded under clause 1.1).
- 9.4 If the buyer acts in breach of contract, in particular if it fails to pay the purchase price that is due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand return of the Goods on the basis of retention of title. The demand for return of the Goods does not at the same time constitute a declaration of withdrawal; we shall in fact be entitled to demand return of the Goods only and reserve the right of withdrawal. If the buyer does not pay the purchase price that is due, we may only assert these rights if we have previously set the buyer a reasonable deadline for payment that has expired without success or if such a deadline is not required under the statutory provisions.

**10. Place of performance, place of jurisdiction & applicable law**

- 10.1 The place of performance is Hamburg, Germany.
- 10.2 The place of jurisdiction for disputes with businesses registered under the German Commercial Code (HGB) and persons who do not have a general place of jurisdiction in Germany is Hamburg, Germany. We may also bring proceedings against the buyer at our discretion at the court that has jurisdiction over its registered office.
- 10.3 The contracts concluded between us and the buyer in accordance with the above Terms and Conditions of Purchase shall be governed exclusively by the law of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded. Insofar as clauses defined in the Incoterms are agreed, the Incoterms in their latest version shall apply.

**11. Responsibility for disposal of waste electrical equipment**

We are registered with the Stiftung Elektro-Altgeräteregister (EAR) that has its head office in Fürth, Germany. If the customer is an entrepreneur, the customer is entitled exclusively to use devices for commercial purposes; the customer must then dispose of the delivered devices in accordance with the statutory and country-specific provisions and must indemnify us against the obligations according to Section 10(2) of the German Waste Electrical and Electronic Equipment Act (ElektroG) and related claims. If the Goods passed on to other customer, the customer must in turn impose a corresponding further obligation on its customers, otherwise the customer must take back the delivered Goods at its own expense after end of use by its customer and must dispose of them properly in accordance with the relevant statutory provisions. The customer shall indemnify us again any claims by its customer under the ElektroG.

**12. Information regarding the German Battery Act (BattG)**

As we sell batteries and rechargeable batteries and devices that contain batteries and rechargeable batteries, we are required under the German Battery Act (BattG) to inform our customers of the following:

Batteries and rechargeable batteries must not be disposed of as domestic waste. Our customers are required by law to return used batteries and rechargeable batteries. Used batteries may contain pollutants that can harm the environment and/or the health of customers if not stored or disposed of properly. However, batteries also contain vital raw materials, such as iron, zinc, manganese and nickel and they are recycled. After use, our customers can either send the batteries back to us with sufficient postage or return them to local collection points. The crossed-out wheelee bin on our products and on the batteries and rechargeable batteries we supply means that these batteries and rechargeable batteries must not be disposed of as domestic waste.

ADE Germany GmbH, 01/2021